

1 ROB BONTA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 MARIANNE A. PANSA
Deputy Attorney General
4 State Bar No. 270928
California Department of Justice
5 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
6 Telephone: (559) 705-2329
Facsimile: (559) 445-5106
7 *Attorneys for Complainant*

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9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2019-060922

13 **DAVID WAYNE NELSON, M.D.**
14 **250 W. 5th Street**
Hanford, CA 93230

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

15 **Physician's and Surgeon's Certificate**
16 **No. G 28470**

17 Respondent.

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19 **FINDINGS OF FACT**

20 1. On or about October 5, 2022, Complainant William Prasifka, in his official capacity
21 as the Executive Director of the Medical Board of California, Department of Consumer Affairs,
22 filed Accusation No. 800-2019-060922 against DAVID WAYNE NELSON, M.D.
23 (Respondent) before the Medical Board of California.

24 2. On or about November 18, 1974, the Medical Board of California (Board) issued
25 Physician's and Surgeon's Certificate No. G 28470 to Respondent. The Physician's and
26 Surgeon's Certificate expired on April 30, 2022, and has not been renewed. A true and correct
27 copy of Respondent's Certificate of Licensure is attached as **Exhibit A** and incorporated herein
28 by reference.

1 3. On or about October 5, 2022, Sharee Woods, an employee of the Complainant
2 Agency, served by Certified and First Class Mail a copy of the Accusation No. 800-2019-060922,
3 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
4 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
5 was and is 250 W 5th Street, Hanford, CA 93230. On or about October 7, 2022, the documents
6 were delivered by the U.S. Postal Service as addressed. A copy of the Accusation, the related
7 documents, Declaration of Service, and delivery tracking information from the U.S. Postal
8 Service are attached as **Exhibit B**, and are incorporated herein by reference.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c).

11 5. Receiving no response to the Accusation, on or about October 28, 2022, the Board's
12 counsel had served upon Respondent via Certified and First Class mail, a Courtesy Notice of
13 Default, including a copy of the Accusation and related documents, to Respondent's address of
14 record stated above, as well as to 2130 W. Hampton Drive, Hanford, CA 93230, an address
15 identified during an address search for Respondent. The Courtesy Notice of Default advised
16 Respondent that if a Notice of Defense was not received within the next 14 calendar days, a
17 Default would be filed against him. On or about November 3, 2022, a Certified Return Receipt
18 (PS Form 3811) for the aforementioned documents sent to Respondent's W. 5th Street address
19 was returned and marked with a delivery date of October 31, 2022. On or about November 16
20 and 23, 2022, the aforementioned documents sent to Respondent's 2130 W. Hampton Drive
21 address were returned by the U.S. Postal Service marked "Not Deliverable as Addressed – Unable
22 to Forward." A copy of the Courtesy Notice of Default, the related documents, Declaration of
23 Service, and envelopes returned by the U.S. Postal Service are attached as **Exhibit C**, and are
24 incorporated herein by reference.

25 6. Business and Professions Code section 118 states, in pertinent part:

26 (b) The suspension, expiration, or forfeiture by operation of law of a license
27 issued by a board in the department, or its suspension, forfeiture, or cancellation by
28 order of the board or by order of a court of law, or its surrender without the written
consent of the board, shall not, during any period in which it may be renewed,
restored, reissued, or reinstated, deprive the board of its authority to institute or

1 continue a disciplinary proceeding against the licensee upon any ground provided by
2 law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the license on any such ground.

3 7. Government Code section 11506 states, in pertinent part:

4 (c) The respondent shall be entitled to a hearing on the merits if the respondent
5 files a notice of defense, and the notice shall be deemed a specific denial of all parts
6 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

7 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
8 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
9 800-2019-060922.

10 9. California Government Code section 11520 states, in pertinent part:

11 (a) If the respondent either fails to file a notice of defense or to appear at the
12 hearing, the agency may take action based upon the respondent's express admissions
13 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

14 10. **Exhibit D**, attached and incorporated herein by reference, is a Declaration of Deputy
15 Attorney General Marianne A. Pansa, which establishes that no Notice of Defense was received
16 by the Board or the Attorney General's office, and further that each exhibit in the Default
17 Decision Packet is a true and correct copy of the original.

18 11. **Exhibit E**, attached and incorporated herein by reference, is a Declaration of David
19 Speiser, M.D., the physician who evaluated the care that Respondent rendered to Patient A,¹ on
20 behalf of the Board. Dr. Speiser reviewed the medical records of the patient and other pertinent
21 medical information obtained during the Board's investigation of Respondent's treatment of
22 Patient A. Dr. Speiser's conclusions in his declaration establish that Respondent engaged in acts
23 of gross negligence and Respondent committed an extreme departure from the standard of care in
24 his treatment of Patient A by performing a surgery inconsistent with Patient A's consent.
25 Specifically, Respondent performed a bilateral tubal ligation, a sterilization surgery, when Patient
26 A only consented to a diagnostic laparoscopy.

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28 ¹ The patient's name is redacted to protect patient confidentiality.

12. **Exhibit F**, attached and incorporated herein by reference, is a Declaration of Robert Glaspie, Investigator, who attempted to interview Respondent during the Board's investigation of Respondent's care and treatment of Patient A, which establishes that Respondent failed to participate in a Board interview in this matter and did so without good cause.

13. **Exhibit G**, attached and incorporated herein by reference, is a Declaration of Costs of Roxanne Caldera, Supervising Investigator I, which establishes the total costs of investigation, including expert review, incurred by the Board in this case as \$9,322.00 (Nine thousand three hundred twenty-two dollars and no cents).

14. **Exhibit H**, attached and incorporated herein by reference, is a Certification of Prosecution Costs Declaration of Marianne A. Pansa, Deputy Attorney General, which establishes the total costs of prosecution by the Department of Justice incurred by the Board in this case as \$14,192.50 (Fourteen thousand one hundred ninety-two dollars and fifty cents).

15. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A, B, C, D, E, F, G, and H, finds that the allegations in Accusation No. 800-2019-060922 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent DAVID WAYNE NELSON, M.D. has subjected his Physician's and Surgeon's Certificate No. G 28470 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Medical Board of California is authorized to revoke Respondent's Physician's and Surgeon's Certificate based upon the following violations alleged in the Accusation:

a. Violations of Business and Professions Code section 2234, subdivision (b), for gross negligence in the care and treatment of Patient A because Respondent performed a

1 laparoscopic bilateral tubal ligation instead of a diagnostic laparoscopy surgery consistent with
2 Patient A's consent.

3 b. Violation of Business and Professions Code section 2234, subdivision (g), for
4 Respondent's failure to participate in an interview by the Board, without good cause.

5 **ORDER**

6 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 28470, heretofore
7 issued to Respondent DAVID WAYNE NELSON, M.D., is revoked.

8 Respondent is hereby ordered to reimburse the Board its costs of investigation and
9 enforcement, in the amount of \$23,514.50, (Twenty three thousand five hundred fourteen dollars
10 and fifty cents), prior to issuance of a new or reinstated license.

11 **Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a**
12 **written motion requesting that the Decision be vacated and stating the grounds relied on**
13 **within seven (7) days after service of the Decision on Respondent.** The agency in its
14 discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in
15 the statute.

16 This Decision shall become effective on **APR 27 2023**.

17 It is so ORDERED **MAR 28 2023**
18 _____

19
20 **JENNA JONES FOR**
21 Reji Varghese, Interim Executive Director
22 For the Medical Board of California
23 Department of Consumer Affairs
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1 ROB BONTA
Attorney General of California
2 STEVE DIEHL
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3 MARIANNE A. PANSA
Deputy Attorney General
4 State Bar No. 270928
California Department of Justice
5 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
6 Telephone: (559) 705-2329
Facsimile: (559) 445-5106
7 marianne.pansa@doj.ca.gov
Attorneys for Complainant
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12 In the Matter of the Accusation Against:

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13 **David Wayne Nelson, M.D.**
14 **250 W 5th Street**
15 **Hanford, CA 93230**

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
No. G 28470,

17 Respondent.
18

19
20 **PARTIES**

21 1. William Prasifka (Complainant) brings this Accusation solely in his official capacity
22 as the Executive Director of the Medical Board of California, Department of Consumer Affairs
23 (Board).

24 2. On or about November 18, 1974, the Medical Board issued Physician's and
25 Surgeon's Certificate Number G 28470 to David Wayne Nelson, M.D. (Respondent). The
26 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to this
27 Accusation, and expired on April 30, 2022, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

STATUTORY PROVISIONS

5. Section 2234 of the Code, states, in pertinent part:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

...

(g) The failure by a certificate holder, in the absence of good cause, to attend

1 and participate in an interview by the board. This subdivision shall only apply to a
2 certificate holder who is the subject of an investigation by the board.

3 COST RECOVERY

4 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licensee found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
9 included in a stipulated settlement.

10 FACTUAL ALLEGATIONS

11 7. Respondent was treating Patient A,¹ a then 31-year-old woman, for left side pelvic
12 pain. On or about September 27, 2019, Respondent diagnosed Patient A's pelvic pain and
13 recommended a diagnostic laparoscopy surgery² as a part of the treatment plan.

14 8. On or about October 1, 2019, just prior to the surgery, Patient A and Respondent both
15 signed a consent form agreeing that Respondent would only perform a diagnostic laparoscopy
16 surgery. The same day, instead of performing a diagnostic laparoscopy surgery consistent with
17 Patient A's consent, Respondent performed a laparoscopic bilateral tubal ligation, a sterilization
18 procedure.

19 9. On or about April 14, 2020, an investigator on behalf of the Board (Investigator)
20 contacted Respondent to schedule an interview about his care and treatment of Patient A.

21 10. On or about May 5, 2020, Investigator called Respondent and requested an interview.
22 Respondent stated he was considering hiring an attorney. Investigator advised Respondent to have
23 his attorney, should Respondent hire one, to contact him.

24 11. On or about June 4, 2020, Investigator left a message for Respondent to schedule an
25 interview.

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27 ¹ The patient's name is redacted to protect patient confidentiality.

28 ² Diagnostic laparoscopy surgery, also referred to as exploratory laparoscopy, is a
minimally invasive procedure that allows a doctor to look directly at the contents of the abdomen
or pelvis using a small camera.

12. On or about July 7, 2020, Investigator left another message for Respondent to schedule an interview.

13. On or about September 16, 2020, Investigator and Respondent scheduled an interview for September 23, 2020.

14. On or about September 19, 2020, Investigator cancelled the interview due to Medical Consultant unavailability.

15. On or about March 9, 2021, Investigator contacted Respondent to reschedule the interview. Respondent stated he would review his schedule and later provide a date.

16. On or about April 7, 2021, Investigator and Respondent scheduled an interview for June 8, 2021.

17. On or about June 8, 2021, Respondent did not answer his phone for the scheduled interview. Respondent later called Investigator and said he would not participate in the interview. Investigator advised Respondent that not participating in the interview could negatively affect the status of his medical license.

18. On or about June 17, 2021, Investigator again called Respondent to confirm whether Respondent wanted to participate in the interview. Investigator advised Respondent that not participating in the interview could negatively affect the status of his medical license. Respondent reiterated his refusal to participate in the interview.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

19. Respondent David Wayne Nelson, M.D. is subject to disciplinary action under section 2234, subdivision (b) of the Code, in that he was grossly negligent in his care and treatment of Patient A by performing a laparoscopic bilateral tubal ligation instead of a diagnostic laparoscopy surgery consistent with Patient A's consent. The circumstances giving rise to this cause of discipline are set forth in paragraphs 7 and 8, which are incorporated herein by reference as if fully set forth. Additional circumstances are as follows:

20. The standard of care requires a surgeon to obtain informed consent from a patient prior to surgery and only perform the consented procedure. Prior to surgery, the surgeon is

1 responsible for verifying the correct patient and the correct procedure with the surgical team.
2 Respondent's inattention and failure to ensure he was performing the correct surgery consistent
3 with Patient A's consent is an extreme departure from the standard of care and constitutes gross
4 negligence.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to Participate in an Interview by the Board)**

7 21. Respondent David Wayne Nelson, M.D. is subject to disciplinary action under section
8 2234, subdivision (g) of the Code, in that he failed to participate in an interview by the Board,
9 without good cause. The circumstances giving rise to this cause of discipline are set forth in
10 paragraphs 9 through 18, which are incorporated herein by reference as if fully set forth.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Medical Board of California issue a decision:

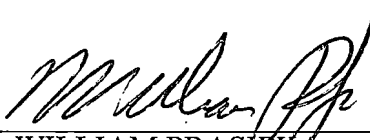
14 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 28470,
15 issued to David Wayne Nelson, M.D.;

16 2. Revoking, suspending or denying approval of David Wayne Nelson, M.D.'s authority
17 to supervise physician assistants and advanced practice nurses;

18 3. Ordering David Wayne Nelson, M.D., to pay the Board the costs of the investigation
19 and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: OCT 05 2022

23 
24 WILLIAM PRASHKA
25 Executive Director
26 Medical Board of California
27 Department of Consumer Affairs
28 State of California
Complainant

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